

October 30, 2007

Ms. Susan Haberstroh  
Education Associate  
Department of Education  
401 Federal Street, Suite 2  
Dover, DE 19901

RE: 11 DE Reg. 399 [School Police Relations Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE) proposal to amend its regulations covering reporting of school-related crimes. In a nutshell, public schools must maintain MOUs with local law enforcement agencies, administrators responsible for reporting crimes and conduct must be trained, and schools which fail to comply with reporting requirements will be designated as "persistently dangerous schools". The latter designation activates the attached 16 DE Admin Code 608 which allows students to transfer to "safe" schools and requires the school to develop a remedial plan. The regulation was published as 11 DE Reg. 399 in the October 1, 2007 issue of the Register of Regulations. SCPD has the following observations. SCPD has the following observations.

First, §4.2 generally contemplates that DOE will train administrators in reporting standards and procedures. However, it includes an authorization for someone who has already completed DOE training to train others. A potential weakness with this approach is that it omits any time line. For example, if someone completed the DOE training 5 years ago, §4.2 would literally still allow that individual to serve as an official trainer irrespective of current qualifications. The DOE may wish to either: 1) include a time standard (e.g. trained within the past 3 years); or 2) clarify that the school must submit the name to the DOE in advance of the training for DOE approval.

Second, §6.0 may be "overbroad". It lists 12 types of conduct which it mandates be reported to the DOE. The 12 types of conduct are described as "(i)n addition to those school crimes required to be reported pursuant to statute". The list "muddies the waters" somewhat since it may include crimes which must be reported by statute. For example, production of child pornography [Title 11 Del.C. §1109] is classified as a

violent felony [Title 11 Del.C. §42019(c)] which must be reported by statute [Title 14 Del.C. §4112(a)(13) and (b)]. Moreover, some of the types of conduct triggering mandatory reporting are relatively minor property offenses (e.g. criminal mischief). In contrast, the statute covering mandatory reporting only mentions offenses against the person. If the Legislature wished the Department to mandate reporting of such minor offenses, it would logically have included them in the statute. Their absence suggests that the DOE is imposing requirements on schools in excess of legislative intent. The burden on districts may be quite substantial. For example, “disorderly conduct” [Title 11 Del.C. §1301] is broadly defined as causing “annoyance” by “making an unreasonable noise or an offensively coarse utterance”. With teenagers, schools will be required to report a huge volume of bantering or face designation as a “persistently dangerous school”. The DOE should consider deletion of property offenses (e.g. criminal mischief) and other minor, high incidence offenses (e.g. possession of alcohol; disorderly conduct) from §6.0.

Third, the DOE proposes to delete the definition of “bullying” from the current regulation while still requiring reporting of “bullying” under §6.0. The Department may wish to include a definition in §2.0 which cross references the statutory definition [Title 14 Del.C. §4112D(a)]. Indeed, the latter statute requires reporting of “bullying” as defined in the statute [Title 14 Del.C. §4112D(b)(2)].

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

Sincerely,

Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

cc: The Honorable Valerie Woodruff  
Ms. Jean Allen  
Ms. Martha Toomey  
Ms. Paula Fontello, Esq.  
Ms. Mary Cooke, Esq.  
Ms Jennifer Kline, Esq.  
Mr. Charlie Michels  
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